

### **ADVISORY OPINION 2004-005**

**Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).**

September 3, 2004

Mr. James E. Addleton  
James E. Addleton, PSC  
106 W Vine St., Ste. 700  
Lexington, Kentucky 40507

Dear Mr. Addleton:

This is in response to your letter dated August 2, 2004, requesting an advisory opinion on behalf of John W. Hampton and yourself regarding a political contribution made by you through your corporation's bank account to John W. Hampton campaign for State Representative for the 76<sup>th</sup> District of Kentucky ("Hampton campaign"). You explain that you are the treasurer for the Hampton campaign and that on January 27, 2004 and May 6, 2004, you contributed via two (2) checks a total of one thousand dollars (\$1,000.00) to the Hampton campaign from your company's bank account. Your company is organized as a Kentucky professional service corporation ("PSC") and you are the sole owner and shareholder.

Upon realizing your error, you contacted the Registry staff, who directed you to seek a refund. On July 19, 2004, the Hampton campaign refunded the contributions to your PSC.

Regarding your contribution, you ask the following questions, the Registry's response to which follows:

**May a candidate accept a contribution from his treasurer's professional service corporation when the treasurer is the sole owner and shareholder of the corporation?**

A candidate may not accept a contribution from a professional service corporation ("PSC"). KRS 121.025 and KRS 121.150(22) expressly prohibit a corporation from giving and a candidate from accepting a corporate contribution. Regarding your reference to KREF Advisory Opinion 1993-006, the Registry's opinion was based on circumstances distinguishable from the facts of your request and on a lawsuit pending during 1993, which was resolved by a higher court. Gable v. Ky. Registry of Election Finance, Ky. Ct. App., No. 92-CA-2348, slip op. (December 10, 1993) (Opinion & Order Dismissing appeal for failure to name indispensable party.) In KREF Advisory Opinion 1998-006, the Registry opined that, regardless of whether a corporation is solely owned, funds in a corporate account may not be transferred to a candidate's campaign.

**If the answer to the first question is no, may replacement checks, with the same dates and amounts as the original checks, written from my individual checking account, be accepted by the candidate and considered to be primary contributions?**

KRS 121.120(4)(i) requires the Registry to "[d]etermine whether the required reports have been filed and if so, whether they conform with the requirements of this chapter and KRS Chapter 121A; give notice to delinquents to correct or explain defections..." (Emphasis added.) You state that upon realizing that you had erred by making a contribution from your corporate account, you contacted the Registry staff who advised you to have the campaign refund the contribution. While this action did not cure any potential violation, it was a voluntary effort to correct the error.

You now propose to take additional corrective action by issuing a replacement check from your personal funds to the campaign. In general, a candidate may not solicit contributions after the date of the election. KRS 121.150(14). However, KRS 121.150(20) permits a candidate to continue raising funds after the date of the election "to defray necessary expenses that arise after the date of the election associated with election contests, recounts, and recanvasses of a specific election, complaints regarding alleged campaign finance violations that are filed with the registry pertaining to a specific election, or other legal actions pertaining to a specific election to which a candidate...is a party." Also, under the order of the recent case of Anderson v. Spear, 356 F.3d 651 (6<sup>th</sup> Cir. 2004), *petition for cert. filed*, (U.S. July 19, 2004) (No. 04-103), the Registry cannot prohibit any candidate with current or open campaign fund accounts from collecting contributions after an election to defray the costs of the campaign.

However, since the Hampton campaign for the 2004 primary election is not a party to a legal action as described in KRS 121.150(20) and since the campaign does not require additional funds to defray an outstanding debt, even after the refund of one thousand dollars (\$1,000) to your PSC, there does not appear to be any circumstances that warrant acceptance of a contribution after the date of the election. Any contribution if received after the date of the election would be required to fall within one of the two above-described exceptions – either in response to a legal action or to defray the outstanding costs (e.g. debt) of the campaign.

This advisory opinion represents the Registry's consideration of the circumstances presented in your letter. If you have any further questions, please do not hesitate to contact the Registry's staff.

Sincerely,

Rosemary F. Center  
General Counsel

RFC/jh

Enclosure

Cc: Registry Members  
Sarah M. Jackson, Executive Director